

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO.: 05-11333 MEL

LUCIA VILLANUEVA )  
Plaintiff )  
VS. )  
TOR REY USA INC. )  
Defendant )

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HER  
MOTION TO AMEND COMPLAINT AND REMAND ACTION TO  
SUFFOLK SUPERIOR COURT**

Now comes Lucia Villanueva, Plaintiff in the above-entitled action, and in support of her Motion to Amend Complaint and Remand Action to Suffolk Superior Court, states as follows:

I. FACTS

The subject action arises out of an incident which occurred on February 18, 2005 at the Tapatio Mexican Grill in Somerville, Massachusetts. At said time and place, Plaintiff, Lucia Villanueva was working on a meat grinder when her right dominant hand was pulled into its defective and unguarded point of operation causing traumatic amputation of her index finger and thumb and her right hand to be crushed. (Exhibit 1)

On July 21, 2005, Defendant Tor Rey USA, Inc. served Defendant's Initial Disclosure on the Plaintiff. Within its disclosure, Defendant Tor Rey USA, Inc. identified proposed defendant, General Services, Inc. of

Medford, Massachusetts as the distributor, seller, or other supplier of the subject meat grinder. (Exhibit 2) Plaintiff has immediately moved to amend her complaint to add General Services, Inc. as a Defendant upon becoming aware of its identity.

## II. ARGUMENT

### A. JUSTICE REQUIRES PLAINTIFF BE GIVEN LEAVE TO AMEND COMPLAINT TO ADD A NECESSARY PARTY

This product liability action was removed to Federal Court by diverse Defendant Tor Rey USA, Inc. Following removal to Federal, Defendant Tor Rey USA, Inc. disclosed the existence of an additional defendant, General Services, Inc., a Massachusetts corporation as the distributor, seller, or other supplier of the subject product. (Exhibit 2) Plaintiff immediately moved to amend her complaint to add General Services, Inc. as a Defendant upon becoming aware of its identity.

Leave of court to amend is given freely where justice requires. Aversa v. United States, 99 F.3d 1200, 1214 n.13 (1st Cir.1996); Resolution Trust Corp. v. Gold, 30 F.3d 251, 253 (1st Cir.1994); Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962). Justice requires that Plaintiff be given leave to amend her complaint to add General Services, Inc. as a defendant in this action as it was directly involved in the testing, inspection, distribution and sale of the product which is alleged to have caused the Plaintiff's injuries. Plaintiff has

alleged that the subject incident and the resulting injuries to the Plaintiff were the result of General Services, Inc.'s negligence and breaches of warranty in the distribution or sale of said product without reasonably necessary safeguards such as a machine guard at the point of operation to prevent injury to user's hands and/or fingers.

B. JOINDER OF NON DIVERSE DEFENDANT AND REMAND TO STATE COURT IS PROPER WHERE STATE LAW ISSUES PREDOMINATE, THERE IS NO PREJUDICE TO DEFENDANT AND JOINDER PROMOTES EFFICIENT USE OF JUDICIAL RESOURCES

This product liability action was removed to Federal Court by diverse Defendant Tor Rey USA, Inc. immediately upon service of the Complaint. Following removal to Federal, Plaintiff has learned of the existence of an additional defendant, General Services, Inc., a Massachusetts corporation. Plaintiff alleges that proposed defendant General Services, Inc. was directly involved in the distribution and sale of the product alleged to have caused Plaintiff's injuries. Plaintiff is seeking leave of court to amend her Complaint to add General Services, Inc. as a defendant and remand of this action to state court due to lack of diversity jurisdiction.

A nondiverse party is not required to be "indispensable" before that party can be joined in a diversity action. St. Louis Trade Diverters, Inc. v. Constitution State Ins. Co., E.D.Mo.1990, 738 F.Supp. 1269. District courts will permit a joinder which destroys diversity when consistent

with principles of fundamental fairness using the following factors: (1) any delay, as well as the reason for delay, in seeking joinder, (2) resulting prejudice to defendant, (3) likelihood of multiple litigation, and (4) plaintiff's motivation for the amendment. Nazario v. Deere & Co., S.D.N.Y.2003, 295 F.Supp.2d 360.

Plaintiff states that her proposed amended complaint is submitted in order to join a necessary party Defendant to this product liability action. There was no untoward delay in seeking to add proposed defendant General Services, Inc. as Plaintiff has moved to amend her complaint immediately upon discovery of the identity of proposed Defendant General Services, Inc. No written or deposition discovery has been conducted.

There is no prejudice to a diverse defendant by adding a nondiverse defendant which destroys diversity jurisdiction when the action was moved shortly after filed in state court and no proceedings had occurred there; the mere fact that defendant faces prospect of trial in state court is insufficient in itself to demonstrate legal prejudice. Hughes v. Promark Lift, Inc., S.D.Fla.1990, 751 F.Supp. 985.

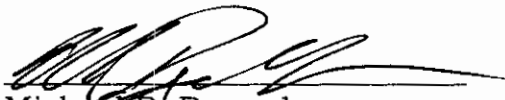
Allowance of Plaintiff's Motion to Amend Complaint to add a necessary party promotes judicial economy and prevents duplicative litigation. Plaintiff has a cause of action against both Tor Rey Usa, Inc., the manufacturer and distributor of the subject product and proposed defendant General Services, Inc., the supplier of the subject product

under Massachusetts negligence and warranty law. The legal elements and facts relevant to each cause of action overlap considerably and if Plaintiff is forced to litigate in separate forums, duplicative testimony is probable.

Having both defendants as parties to one action promotes efficient use of judicial resources, and there is a lack of significant federal interest in deciding state law issues which predominate, and remand will not significantly the present parties. See Heininger v. Wecare Distributors, Inc., S.D.Fla.1989, 706 F.Supp. 860. Carter v. Dover Corp., Rotary Lift Div., E.D.Pa.1991, 753 F.Supp. 577. Morze v. Southland Corp., E.D.Pa.1993, 816 F.Supp. 369. A balance of equities requires that plaintiff be allowed to join General Services, Inc. in this action and that this action be remanded to state court due to nondiversity of General Services, Inc.

Wherefore, Plaintiff respectfully requests this Honorable Court grant her leave to file the subject Amended Complaint and remand this action to Suffolk Superior Court for lack of diversity jurisdiction.

Respectfully submitted,  
Plaintiff, By her attorney,

  
Michael R. Rezendes  
REZENDES & TREZISE  
Batterymarch Park II  
Quincy, MA 02169  
617 472-3900

Dated: 8/10/05



**TALDO AMBULANCE SERVICE, INC.**  
137 Washington St., P.O. Box 435  
Somerville, MA 02143  
1- (617) 625-0042  
Fax: 1- (617) 625-0941



**ATLANTIC AMBULANCE**  
Div. of Cataldo Ambulance  
59 N. Franklin St.  
Lynn, MA 01904  
1- (781) 592-5400  
Fax: 1- (781) 477-0320

## PATIENT

AGE: 24 DATE OF BIRTH: 12/20/1980 SOCIAL SECURITY NUMBER: N/A  
MM DD YYYY

ST: UCIA LAST: Villanueva  
CITY (NH): ROOM NO.:

STREET ADDRESS: 22 Grove St APT. NO.:

CITY: Walsen STATE: MA ZIP: 02150

HOME PHONE: 171838-9277 WORK PHONE: ( )

EMERGENCY PARTY: SELF RELATIONSHIP:

DATE OF BIRTH: ( ) WORK PHONE: ( )

PRIMARY CARE PHYSICIAN: CITY: HOSPITAL:

## TRIP INFORMATION

VEHICLE #: 49 TECHNICIAN 1: Sikes

SISTING UNITS: TECHNICIAN 2: Cohen

PD, FD, ASD TECHNICIAN 3:

SE OR DR. ON BOARD? ☐ YES ☒ NO

## TRANSPORT FROM / INCIDENT LOCATION

CITY NAME: APT. ROOM #:

STREET ADDRESS: 2 Broadway APT. ROOM #:

CITY: Waltham STATE: MA ZIP: 02145 FLOOR:

TRANSPORT TO: APT. ROOM #:

CITY: Boston STATE: MA ZIP:

METER READING: START: ENDING: TOT. MILEAGE: 2.7

## INCIDENT TYPE

ASSAULT ☐ BICYCLE ☐ BITE/STING ☐ FALL ☐ FIRE

HAZMAT ☐ MEDICAL ☐ MVA- PLATE # ST

PEDESTRIAN ☐ SHOOTING ☐ STABBING

OTHER: finger amputation

IS THIS INCIDENT WORK-RELATED? ☒ YES ☐ NO

## PATIENT DISPOSITION

DISCHARGE ☐ NO SERVICE ☐ REFUSAL

ROUND TRIP ☐ SECT-12 (ATTACH COPY) ☐ SUDDEN DEATH

TREATED-NO TRANSPORT

OUTPATIENT VISIT:

DEPARTMENT: SERVICE PROVIDED:

TRANSFER: REASON: ADMITTED TO ROOM #:

IS ASSESSMENT PERFORMED? ☒ YES ☐ NO

IS ASSESSMENT(S):

SCENARIO: 24 yro female w/ finger amputation

from cheese grater

## PLEASE PRINT / USE BLACK OR BLUE INK ONLY.

DATE OF SERVICE: 2/18/05 CALL RECEIVED: 327770 LOG #:  
S M T W T F S ☐ AM ☐ PM

SOURCE OF CALL: POLICE ☐ FIRE ☐ HOSP ☐ N.H. ☐ FAMILY  
DOCTOR ☐ NURSE ☐ FRIEND ☐ EMPLOYER ☐ HMO  
OTHER: CODE:

## DISPATCH FOR

☒ ALS ☒ BLS ☒ EMERGENCY ☐ SCHEDULED TRANSFER  
☐ P-B WAIVER ☐ OTHER M.R. #

## RESPONSE TIMES

RESPONDED FROM: 133

DISPATCH	PR	SCENE ARRIVAL	PATIENT CONTACT	SCENE DEPART	PR	HOSPITAL ARRIVAL	IN SERVICE
711	1	715		726	2	733	

## 1ST RESPONDERS

☒ POLICE ☒ FIRE ☒ OTHER A38

## CHIEF COMPLAINT / CLINICAL IMPRESSION

finger amputation  
CHIEF COMPLAINT CLINICAL FIELD IMPRESSION

## VITAL SIGNS

☐ UNABLE TO OBTAIN / REASON:

TIME	BP	PULSE	RESP.	O2 SAT
en route	116/64	76	16	100% RA

## PHYSICAL ASSESSMENT

AVPU: ☒ ALERT ☐ VERBAL ☐ PAINFUL ☐ UNRESPONSIVE  
LUNGS: LEFT ☒ CLEAR ☐ DIM ☐ ABSENT ☐ WHEEZE ☐ RALES ☐ RHONCHI  
RIGHT ☒ CLEAR ☐ DIM ☐ ABSENT ☐ WHEEZE ☐ RALES ☐ RHONCHI  
PUPILS: ☒ PERIL ☐ DILATED ☐ CONSTR. ☐ SLUGGISH ☐ UNEQUAL ☐ UNREACT  
SKIN: ☐ NORMAL ☐ HOT ☒ WARM ☐ COOL ☐ COLD ☒ DRY ☐ MOIST  
☐ DIAPHORETIC ☐ PALE ☐ CYAN ☐ MOTTLED ☐ FLUSHED  
GLASGOW COMA SCALE: 15

## PROCEDURES

AIRWAY: A0396 ☐ OPA ☐ NPA ☐ LMA SIZE:   
☐ ETT ☐ NTT SIZE: ATT/SUCC: /  
OXYGEN: A0422 ☐ N/C ☐ NRB ☐ BVM LPM:   
DEFIBRILLATION: A0392 ☐ AED # SHOCKS: ☐ MANUAL # SHOCKS:   
12 LEAD ECG: A9214 ☐ NO ☐ YES INTERPRETATION:   
IV THERAPY: SITE: GAUZE: 16g ATT/SUCC: / / /  
A0394 FLUID: NS TOT. AMOUNT FLUID ADMIN: KVO  
IMMOBILIZATION: ☐ C-COLLAR ☐ SHORT BOARD / KED ☐ LONG BOARD  
OTHER:

## PATIENT MEDICATIONS

Pl. denied

## PAST MEDICAL HISTORY

Pl. denied

## ALLERGIES

☐ NKA ☒ DENIES

NARRATIVE:

Upon arrival, found 24 yro female walking through restaurant Pt. was using a

Industrial cheese grater - when her hand got caught in the blades Pt. amputated  
w/ thumb & index finger @ first knuckle. Pt. c/o @ hand pain but denied

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Lynn, MA 01904  
1- (781) 592-5400  
Fax: 1- (781) 477-0320

PATIENT		SOCIAL SECURITY NUMBER:	
X: <input checked="" type="checkbox"/>	AGE: 23	DATE OF BIRTH: 12/20/1980	
	MM DD YYYY		

RST: Lucia M.I. Villanueva LAST

CITY (NH): ROOM NO.:

REET ADDRESS: 102 Grove St. APT. NO.:

Y: Chelsea STATE: MA ZIP: 02150

IME PHONE: WORK PHONE:

SPONSIBLE PARTY: gmr RELATIONSHIP:

XT OF KIN: WORK PHONE:

IME PHONE: WORK PHONE:

MARY CARE PHYSICIAN: CITY: HOSPITAL:

## TRIP INFORMATION

VEHICLE #: 38 TECHNICIAN 1: P. Vieira

ASSISTING UNITS: TECHNICIAN 2: V. Tran

49 TECHNICIAN 3: C. Fowler

ORSE OR DR. ON BOARD? ☐ YES ☒ NO

## TRANSPORT FROM / INCIDENT LOCATION

CITY NAME: APT. ROOM #:

REET ADDRESS: 82 Broadway APT. ROOM #:

Y: Somerville STATE: MA ZIP: 02143 FLOOR:

## TRANSPORT TO

CITY NAME: APT. ROOM #:

REET ADDRESS: NO TRANSPORT APT. ROOM #:

Y: NO TRANSPORT STATE: ZIP:

OMETER READING: START: ENDING: TOT. MILEAGE: 0

## INCIDENT TYPE

☐ ASSAULT ☐ BICYCLE ☐ BITE/STING ☐ FALL ☐ FIRE

☐ HAZMAT ☐ MEDICAL ☐ MVA- PLATE # ST

☐ PEDESTRIAN ☐ SHOOTING ☐ STABBING

☒ OTHER amputation

IS THIS INCIDENT WORK-RELATED? ☒ YES ☐ NO

## PATIENT DISPOSITION

☐ DISCHARGE ☐ NO SERVICE ☐ REFUSAL

☐ ROUND TRIP ☐ SECT-12 (ATTACH COPY) ☐ SUDDEN DEATH

☐ TREATED-NO TRANSPORT

☐ OUTPATIENT VISIT:

DEPARTMENT: SERVICE PROVIDED:

☐ TRANSFER:

REASON: ADMITTED TO ROOM #:

ALS ASSESSMENT PERFORMED? ☐ YES ☐ NO

(PT TRIAGED TO BLS)

ALS ASSESSMENT(S):

SCENARIO: Pr trix -> P-49

## PLEASE PRINT / USE BLACK OR BLUE INK ONLY

DATE OF SERVICE	CALL RECEIVED	LOG #	CALL RECEIVED BY:
2/18/05			
S M T W T F S	<input type="checkbox"/> AM <input type="checkbox"/> PM	LOG # 321670	Nicole

SOURCE OF CALL	<input type="checkbox"/> POLICE	<input type="checkbox"/> FIRE	<input type="checkbox"/> HOSP	<input type="checkbox"/> N.H.	<input type="checkbox"/> FAMILY
	<input type="checkbox"/> DOCTOR	<input type="checkbox"/> NURSE	<input type="checkbox"/> FRIEND	<input type="checkbox"/> EMPLOYER	<input type="checkbox"/> HMO
	<input type="checkbox"/> OTHER:				

## DISPATCH FOR

☐ ALS ☒ BLS ☒ EMERGENCY ☐ SCHEDULED TRANSFER

☐ P-B WAIVER ☐ OTHER M.R. #

## RESPONSE TIMES

RESPONDED FROM: Magown Square

DISPATCH	PR	SCENE ARRIVAL	PATIENT CONTACT	SCENE DEPART	PR	HOSPITAL ARRIVAL	IN SERVICE
711	1	715			-		

## 1ST RESPONDERS

☒ POLICE ☒ FIRE ☐ OTHER

## CHIEF COMPLAINT / CLINICAL IMPRESSION

(P) HAND AND THUMB & INDEX FINGER amputation

## CHIEF COMPLAINT

## VITAL SIGNS

☒ UNABLE TO OBTAIN / REASON: care given to P49

TIME	BP	PULSE	RESP.	O2 SAT

## PHYSICAL ASSESSMENT

AVPU: ☒ ALERT ☐ VERBAL ☐ PAINFUL ☐ UNRESPONSIVE

LUNGS: LEFT ☐ CLEAR ☐ DIM ☐ ABSENT ☐ WHEEZE ☐ RALES ☐ RHONCHI

RIGHT ☐ CLEAR ☐ DIM ☐ ABSENT ☐ WHEEZE ☐ RALES ☐ RHONCHI

PUPILS: ☐ PERRL ☐ DILATED ☐ CONSTR. ☐ SLUGGISH ☐ UNEQUAL ☐ UNREACT

SKIN: ☐ NORMAL ☐ HOT ☐ WARM ☐ COOL ☐ COLD ☐ DRY ☐ MOIST

☐ DIAPHORETIC ☐ PALE ☐ CYAN ☐ MOTTLED ☐ FLUSHED

GLASGOW COMA SCALE (15)

## PROCEDURES

AIRWAY: A0396 ☐ OPA ☐ NPA ☐ LMA SIZE: patent

☐ ETT ☐ NTT SIZE: ATT / SUCC: /

OXYGEN: A0422 ☐ N/C ☐ NRB ☐ BVM LPM:

DEFIBRILLATION: A0392 ☐ AED # SHOCKS: ☐ MANUAL # SHOCKS:

12 LEAD ECG: A9214 ☐ NO ☐ YES INTERPRETATION:

IV THERAPY: SITE: GAUGE: ATT/SUCC: /

A0394

FLUID: TOT. AMOUNT FLUID ADMIN:

IMMOBILIZATION: ☐ C-COLLAR ☐ SHORT BOARD / KED ☐ LONG BOARD

OTHER:

## PATIENT MEDICATIONS

denies

## PAST MEDICAL HISTORY

denies

## ALLERGIES

☒ ANKA ☒ DENIES

## NARRATIVE:

Dispatched to HAND Lac.

23 y/o ♀ thumb and index finger amputations. Pt found standing in kitchen of restaurant, CAOx4. Pt is Spanish speaking only & per fire, pt was using



**USA, INC**  
3920 WESTHOLLOW PARKWAY  
HOUSTON, TX 77062  
281-564-3150

# Invoice

INVOICE NUMBER:  
10304

INVOICE DATE:  
Jan 9 2002

PAGE:

**SHIP TO:**

GENERAL SERVICES INC  
PO BOX 10  
MEDFORD MA 02155  
USA

**SHIP TO:**

GENERAL SERVICES INC  
407R MYSTIC AVE UNIT 16  
MEDFORD MA 02155  
USA

CUSTOMER ID	CUSTOMER PG	PAYMENT TERMS
MA-GSI	7498	2% 10, Net 30 Days

CUSTOMER NAME	SHIPPING METHOD	SHIP DATE	DEL DATE
JESUS	WATKINS COLLECT	1/9/02	2/8/02

QUANTITY	DESCRIPTION	BACK ORDER	UNIT PRICE	EXTENSION
1	M-22 R OPEN BOWL MEAT GRINDER 1 HP MOTOR 110V 60 HZ SER# 101-11958 101-11957		774.00	1 548.00

CHECK NO:

SUBTOTAL	1 548.00
TAXES	
REBATE	
TOTAL DUE	1 548.00
TOTAL RECEIVED	
TOTAL	1 548.00

RECHARGE PER MONTH ON ALL PAST DUE BALANCES

TRR 017